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EXAMINER	
JEAN-LOUIS, SAMIRA JM	

ART UNIT	PAPER NUMBER
1617	

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/550,358	GRASSBERGER ET AL.	
	Examiner	Art Unit	
	SAMIRA JEAN-LOUIS	1617	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *19 November 2008*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *3 and 5-9* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *3 and 5-9* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Response to Amendment

This Office Action is in response to the amendment submitted on 11/19/08. Claims 3 and 5-9 are currently pending in the application, with claims 1-2 and 4 having being cancelled. Accordingly, claims 3 and 5-9 are being examined on the merits herein.

Receipt of the aforementioned amended claims is acknowledged and has been entered.

Applicant's argument with respect to Ormerod who solely teaches topical formulations and teaches away from the use of systemic preparations has been fully considered. Applicant further argues that Ormerod does not expressly teach an immunosuppressive agent for oral or i.v. administration and that Hardman does not teach the macrolide 33-epichloro-33-desoxyascomycin has again been fully considered. However, such arguments are not persuasive as the claims that were rejected over Ormerod in view of Hardman did not include any limitation of a systemic drug administration. In fact, the claims were directed to a composition and a method of treating symptoms associated with dermatological diseases or conditions comprising 33-epichloro-33-desoxyascomycin and a retinoid. Ormerod teaches the use of SDZ ASM 981 (i.e. 33-epichloro-33-desoxyascomycin, an immunosuppressive macrolide) in the treatment of dermatological conditions including psoriasis and acne (see pg. 4, lines 30-33, pg. 5, lines 1-10). Hardman, on the other hand, was provided to demonstrate that retinoids are routinely used in skin diseases such as acne, aging, and psoriasis

(see pg. 1599). Particularly, Hardman teaches isotretinoin and etretinate as two types of retinoids effective in their treatment of dermatological conditions (see pg. 1599, fig. 64-2 and pg. 1600-1602). Because both Ormerod and Hardman teach their compounds as effective compounds in treating dermatological diseases such as acne and psoriasis, the Examiner contends that one of ordinary skill in the art would have found it obvious to combine both components with the reasonable expectation of providing a method or composition that is effective in treating dermatological conditions such as acne and psoriasis. Additionally, Hardman teaches that certain dermatological conditions can further entail additional therapeutic agents' use such as antibacterial agents. Consequently, to one skilled in the art would have found it obvious to further include an antibacterial agent in the modified composition/method of Ormerod and Hardman since Hardman teaches the use of antibacterial agents in the treatment of dermatological disorders such as acne. Thus, the Examiner contends that the rejections of record were indeed proper and are therefore made Final.

Applicant's contention that the Examiner has not considered an important aspect which is the holding based on unexpected results. Such arguments are not persuasive as the claims as previously presented did not recite the synergistic effects but rather that the combination of the immunosuppressive agent and a retinoid could be additive or synergistic. Thus, in view of the *supra* response such arguments are moot as applicant is now arguing the newly amended claims. Moreover, the Examiner respectfully points out that Applicant's claim of synergistic effect is not commensurated

in scope with the newly amended claims. While Applicant claims a synergistically effective amount of a composition comprising 33-epichloro-33-desoxyascomycin in combination with a retinoid, the specification solely demonstrated such synergistic effect at only 80 mg of pimecrolimus with 80 mg of tazarotene. Consequently, the evidence does not commensurate in scope with the claimed invention. As for applicant's claims that Ormerod teaches a necessary addition of a permeation modulator, the Examiner would like to respectfully point out that the claim language in applicant's invention (i.e. comprising language) does not exclude addition of other components into the aforementioned composition. Consequently, the Examiner contends that Ormerod in view of Hardman does indeed render the claims *prima facie* obvious and the rejection is therefore maintained.

Applicant's argument that the rejection of claim 5 is now moot since the claim is now amended has been fully considered but is not found persuasive. While applicant amended the claims to now recite a synergistic use for the composition, the claims are still prima facie obvious over Ormerod in view Hardmann. Given the teachings of Ormerod and that of Hardman, one of ordinary skill in the art would have found it obvious to combine the pimecrolimus of Ormerod with the retinoid of Hardman since both teach the use of their compounds for the treatment of dermatological conditions or diseases. Moreover, it is well within the purview of the skilled artisan to include a label and packaging instructions and formulate the composition as a kit for indications of use of a pharmaceutical composition. Furthermore, the Examiner would like to point out to Applicant that an intended use in a composition/kit claim is not given patentable weight.

A recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the limitation of the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art. *See In re Casey, 152 USPQ 235 (CCPA 1967) and In re Otto, 136 USPQ 458, 459 (CCPA 1963)*. Thus, the intended use "*for synergistic use in the treatment of a dermatological disease such as eczema, atopic dermatitis, acne, psoriasis, skin aging, sun damage, post-peel erythema or stretch marks*" is not afforded patentable weight.

Applicant's argument with respect to Vaishnaw et al. who does not teach the claimed invention or a synergistic effect when treating a dermatological condition has been fully considered but is not found persuasive. It is noted that the features upon which applicant relies (i.e., a synergistically effective amount) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). While applicant argues that Vaishnaw included a CD2-binding agent in his composition, the Examiner again reminds applicant that the claimed invention does not exclude addition of other components. Vaishnaw et al. particularly teach the use of CD2-binding agent along with an auxiliary agent or combinations thereof including retinoids such as etretinate and cytokine inhibitors such

as macrolactam and particularly pimecrolimus (see pgs. 2-3, paragraphs 0023-0024 and pg. 16, paragraphs 0186-0188). Thus, to one of ordinary skill in the art would have found it obvious to add the auxiliary agents pimecrolimus and etretinate in a composition with CD2-binding agent since Vaishnaw teach the aforementioned combination in the treatment of dermatological disorders including psoriasis. Consequently, the rejection of claims 1-3 and 7-9 over Vaishnaw et al. was indeed proper and is therefore maintained.

For the foregoing reasons, the rejections of record were indeed proper and are therefore maintained. However, in view of applicant's amendment, the following 112, first paragraph and modified 103 (a) Final rejection are being made.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

> The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 3 and 5-9 are rejected under 35 U.S.C. 112, first paragraph, because the specification, while being enabling for a method of treating symptoms of a dermatological condition comprising administering to a subject suffering thereof a synergistically effective amount of a composition comprising 80 mg of 33-epichloro-33-desoxyascomycin in combination or association with 80 mg of a retinoid, does not

reasonably provide enablement for all synergistically effective amounts of the aforementioned combination. The specification does not enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to use the invention commensurate in scope with these claims.

The instant claims are drawn to a method of treating symptoms of a dermatological condition comprising administering to a subject suffering thereof a synergistically effective amount of a composition comprising 33-epichloro-33-desoxyascomycin in combination or association with a retinoid selected from the group consisting of etretinate, isotretinoin and tazarotene together with at least one pharmaceutically acceptable diluent or carrier. The instant specification fails to provide information that would allow the skilled artisan to practice the treatment of all diseases associated with immunoregulatory abnormality.

In re Sichert, 196 USPQ 209 (CCPA 1977)

To be enabling, the specification of the patent must teach those skilled in the art how to make and use the full scope of the claimed invention without undue experimentation. In re Wright, 999 F.2d 1557, 1561 (Fed. Cir. 1993). Explaining what is meant by "undue experimentation," the Federal Circuit has stated:

> The test is not merely quantitative, since a considerable amount of experimentation is permissible, if it is merely routine, or if the specification in question provides a reasonable amount of guidance with respect to the direction in which the experimentation should proceed to enable the determination of how to practice a desired embodiment of the

claimed invention. PPG v. Guardian, 75 F.3d 1558, 1564 (Fed. Cir. 1996).[1]

The factors that may be considered in determining whether a disclosure would require undue experimentation are set forth by In re Wands, 8 USPQ2d 1400 (CAFC 1988) at 1404 where the court set forth the eight factors to consider when assessing if a disclosure would have required undue experimentation. Citing Ex parte Forman, 230 USPQ 546 (BdApls 1986) at 547 the court recited eight factors:

1) the quantity of experimentation necessary,
2) the amount of direction or guidance provided,
3) the presence or absence of working examples,
4) the nature of the invention,
5) the state of the prior art,
6) the relative skill of those in the art,
7) the predictability of the art, and
8) the breadth of the claims.

These factors are always applied against the background understanding that scope of enablement varies inversely with the degree of unpredictability involved. In re Fisher, 57 CCPA 1099, 1108, 427 F.2d 833, 839, 166 USPQ 18, 24 (1970). Keeping that in mind, the Wands factors are relevant to the instant fact situation for the following reasons:

1. The nature of the invention, state and predictability of the art, and relative skill level

The invention relates to a method of treating symptoms of a dermatological condition comprising administering to a subject suffering thereof a synergistically

[1] As pointed out by the court in In re Angstadt, 537 F.2d 498 at 504 (CCPA 1976), the key word is "undue", not

effective amount of a composition comprising 33-epichloro-33-desoxyascomycin in combination or association with a retinoid selected from the group consisting of etretinate, isotretinoin and tazarotene together with at least one pharmaceutically acceptable diluent or carrier. The relative skill of those in the art is high, that of an MD or PHD. That factor is outweighed, however, by the unpredictable nature of the art. As illustrative of the state of the art, the examiner cites the fact that in view of the prior art references that teach pimecrolimus and tazarotene as effective in the treatment of dermatological disorders, one of ordinary skill in the art would not expect that every single combination of pimecrolimus and retinoids would result in a synergistic effect.

2. The breadth of the claims

The claims are thus very broad insofar as they recite the "a synergistically effective amount" and yet applicant only provides guidance of a synergistic effect for the combination of 80 mg of pimecrolimus and 80 mg of tazarotene. Moreover, as a practical matter it is nearly impossible to conclude that all dosages would possess a synergistic effect without undue experimentation.

3. The amount of direction or guidance provided and the presence or absence of working examples

The specification provides no direction or guidance for "a synergistically effective

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"experimentation".

amount of a composition of pimecrolimus in combination with a retinoid". No reasonably specific guidance is provided concerning the synergistic effect of all dosages of pimecrolimus in combination with a retinoid, other than the table on pg. 7. The latter is corroborated by the atopic dermatitis results which show a single combination of 80 mg of pimecrolimus in combination with 80 mg of tazarotene that led to an increased inhibition of contact hypersensitivity reaction.

The instant disclosure provides no evidence to suggest that this unique activity can be extrapolated to all dosages of pimecrolimus in combination with all dosages of retinoids, for example, and thus does not meet the "how to use" prong of 35 USC 112, first paragraph with regard thereto.

4. The quantity of experimentation necessary

Because of the known unpredictability of the art, and in the absence of experimental evidence, no one skilled in the art would accept the assertion that the instantly claimed agents could predictably possess synergistic effects at all dosages or all amounts utilized in combination with a retinoid as inferred by the claims and contemplated by the specification. Accordingly, the instant claims do not comply with the enablement requirement of §112, since to practice the invention claimed in the patent a person of ordinary skill in the art would have to engage in undue experimentation, with no assurance of success.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 3, 6-7, and 9 are rejected under 35 U.S.C. 103 (a) as being unpatentable over Ormerod et al. (WO 99/24036, previously cited) in view of Hardman et al. (Goodman & Gilman's: The Pharmacological Basis Of Therapeutics, Ninth Edition, 1996, pgs. 1598-1605, previously cited).

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Ormerod et al. teach topical formulations, manufacture of a topical formulation and method for treatment of a dermatological condition comprising an immunosuppressive macrolide and a permeation modulator, which when applied to the skin produces a minimal systemic effect (see abstract). Specifically, the immunosuppressive macrolides taught include: sirolimus, FK-506 or SDZ ASM-981 (i.e. 33-epi-chloro-33-desoxyascomycin) and which conventionally are known to be applied by means of topical creams or taken orally (see pg. 1, lines 23-25, pg. 5, lines 3-4). In Example 3, topical sirolimus formulation applied to the skin of patients with chronic plaque psoriasis result in clinical improvement (see results found in Table 3, pg. 14). Additionally, Ormerod et al. teach that the formulation can be dissolved or suspended in any pharmaceutically acceptable carrier or vehicle such as water (see pg. 7, lines 26-28). Ormerod et al. also teach that systemic administration of macrolide immunosuppressants have been associated with undesirable side effects when taken systemically for treating dermatological diseases, such as, psoriasis or atopic dermatitis (p. 3, lines 13-17); however, Ormerod et al. has overcome the problem by the formulation of topical macrolide immunosuppressants which reach the site of action via the incorporation of the permeation modulator.

Ormerod et al., however, do not teach addition of a retinoid or the combination of the macrolide immunosuppressive agents with retinoids. Likewise, Ormerod et al. do not teach a synergistically effective amount of the aforementioned combination.

Hardman et al. teach the utility of retinoids for effects on epithelia that have "revolutionized dermatological therapy in the last two decades" (see pg. 1598, section entitled, "Retinoids"). In Table 64-3, many retinoid-responsive skin diseases are listed and notably are acne, cutaneous aging and psoriasis (see p. 1599). Among the effective retinoids discussed are first generation retinoid isotretinoin and second generation, etretinate (see p. 1599, Figure 64-2 and p. 1600-1602, sections entitled "Isotretinoin" or "Etretinate"). In addition to treatment using retinoids, Hardman et al. also teach that treatment of skin diseases, most notably acne, may also include additional therapeutic agents, such as, antibacterial agents which may be applied topically or given systemically (see pgs. 1604-1605). Thus Hardman et al. teach that retinoids and antibiotics are useful for treatment of dermatological diseases.

Because both Ormerod et al. and Hardman et al. teach the treatment of psoriasis using 33-epi-chloro-33-desoxyascomycin or retinoids, respectively; it is prima facie obvious to combine these two teachings with the result being that of the composition and/or method of applicants' claims 3 and 6. The basis for this prima facie obviousness rejection can be found in the following case law: "It is however, prima facie obvious to combine two compositions taught in the prior art useful for the same purpose, in order to form a third composition to be used for the very same purpose...[T]he idea of combining them flows logically from their having been individually taught in the prior art." In re Kerkhoven, 626 F.2d 846, 850, 205 USPQ 1069,1072 (CCPA 1980).

Furthermore, one of ordinary skill in the art would have found it obvious to use the pharmaceutical composition described above either orally or topically for treatment of dermatological diseases as suggested by Ormerod et al. and to further determine synergistic effective amounts depending on the subject being treated or severity of the disease in said subject. At the time of Applicants invention, it would have been obvious to one of ordinary skill in the art to make adjustments to the particular conventional working conditions (e.g., determining result effective amounts of the ingredients beneficially taught by the cited references), as well as treating a particular type of dermatological disease, is deemed merely a matter of judicious selection and routine optimization which is well within the purview of the skilled artisan and no more than an effort to optimize results.

Regarding applicant's limitation of administering a synergistically effective amount, in view of applicant's own definition that such terms denote an amount of macrolide or immunosuppressant and an amount of retinoid that are effective in their respective treatment and result in more than additive effect, the Examiner contends that such limitation is met by both Ormerod (pg. 4, lines 15-23) and Hardman (pg. 1600, right col., paragraph 2) since both references teach effective amounts of each compound that would result in an enhanced additive effect when combined for treating acne or psoriasis.

Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ormerod et al. (WO 99/24036, previously cited) in view of Hardman et al.

(Goodman & Gilman's: The Pharmacological Basis Of Therapeutics, Ninth Edition, 1996, pgs. 1598-1605, previously cited) as applied to claims 3, 6-7, and 9 above, and further in view of Remington's (The Science and Practice of Pharmacy, Nineteenth Edition, Vol I, 1985, pg. 806, previously cited).

It is respectfully pointed out that a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the limitation of the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art. *See In re Casey, 152 USPQ 235 (CCPA 1967) and In re Otto, 136 USPQ 458, 459 (CCPA 1963).* Thus, the intended use of "*for synergistic use in the treatment of a dermatological disease such as eczema, atopic dermatitis, acne, psoriasis, skin aging, sun damage, post-peel erythema or stretch marks*" is not afforded patentable weight.

Ormerod et al. and Hardman et al. do not teach a kit comprising 33-epi-chloro-33-desoxyascomycin and retinoids with printed instructions.

Remington's: The Science and Practice of Pharmacy, Nineteenth Edition, Vol I, 1985, pg. 806 teaches that the inclusion of a package insert including "indications and use" of the pharmaceutical composition is mandated by 21 CFR 201.57.

At the time of Applicants' invention, it would have been obvious to one of ordinary skill in the art to include a label and packaging in the combined composition of Ormerod et al. and Hardman et al. One of ordinary skill in the art would have been motivated to include the packaging and the insert, because it is mandated by law as taught in Remington's.

Furthermore, It is well-settled law that combining printed instructions and an old product into a kit will not render the claimed invention nonobvious even if the instructions detail a new use for the product. See In re Ngai, 367 F.3d 1336, 1339, 70 USPQ2d 1862, 1864 (Fed. Cir. 2004). Further, the inclusion of a package insert or label showing the "the name of drug, dosage, dosage form, route of administration, indication and direction of use" of a pharmaceutical composition is mandated by 21 CFR 201.57 and is therefore obvious to one of ordinary skill in the art.

Claims 3, 5, and 7-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Vaishnaw et al. (U.S. 2003/0185824 A1, previously cited).

Vaishnaw et al. teach compositions, kits and methods for treating or preventing an epidermal or dermal disorder including psoriasis and atopic dermatitis comprising a CD2-binding agent in combination with auxiliary agents and a pharmaceutical carrier and instructions on how to use the agents in the case of kits (see abstract, pg. 8, paragraph 0105, pg. 18, paragraphs 0204-0205 and pg. 18, paragraphs 0210-0211).

Exemplary auxiliary agents include retinoids such as etretinate and cytokine inhibitors such as pimecrolimus (i.e. 33-epichloro-33-desoxyascomycin) or any combinations thereof (see pgs. 2-3, paragraphs 0023-0024 and pg. 16, paragraphs 0187-0188). Importantly, Vaishnaw et al. teach the pharmaceutical composition can be administered systemically (i.e. intravenously, etc...), by infusion, orally or topically (see pg. 17, paragraphs 0194 and 0208).

Vaishnaw et al. do not teach compositions comprising exclusively 33-epi-chloro-33-desoxyascomycin and retinoids or a synergistically effective amount of a composition comprising the aforementioned compounds.

However, Vaishnaw et al. do teach that formulations can be made using 33-epi-chloro-33-desoxyascomycin or retinoids for the treatment of autoimmune disorders or chronic inflammatory disorder. Thus, it would have been obvious to one of ordinary skill in the art to combine both 33-epi-chloro- 33-desoxyascomycin and retinoids in the composition of Vaishnaw et al. as Vaishnaw et al. teach that each compound can be added to his composition for the treatment of psoriasis. Additionally, given applicant's definition of a "synergistically effective amount" wherein each component result in a more than additive effect (see Applicant's specification, pg. 9, 2nd paragraph), the Examiner contends that one of ordinary skill in the art would conclude that most effective dosages utilized would necessarily result in an additive effect and such additive effect can be determined through routine experimentation. Thus, given the teachings of Vaishnaw et al. and applicant's own specification, one of ordinary skill in the art would have been motivated to add both retinoids and 33-epi-chloro-33-desoxyascomycin to the composition of Vaishnaw et al. with the reasonable expectation of obtaining a composition that is highly efficacious in treating psoriasis.
Moreover, as a general principle it is *prima facie* obvious to combine two compositions each of which is taught by the prior art to be useful for the same purpose, in order to form a third composition to be used for the very same purpose, the idea of combining them flows logically from their having been individually taught in the prior art. See *In re Kerkhoven*, 626 F.2d 846, 850, 205 USPQ 1069, 1072 (CCPA 1980) **MPEP 2144.06.**

Regarding the claim limitation in claim 3 which requires the amount of 33-epi-chloro- 33-desoxyascomycin and retinoids to be synergistic, it would have been obvious to a skilled artisan that the addition of both 33-epi-chloro-33-desoxyascomycin and retinoids would necessarily be additive at most dosages given that Vaishnaw et al. teach that effective amounts of the aforementioned drugs were used in treating psoriasis. Thus, it would be well within the purview of the skilled artisan to optimize the different concentrations of the two drugs in order to determine the enhanced additive effects of the two combined drugs.

Conclusion

No claims are allowed.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later

than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Samira Jean-Louis whose telephone number is 571-270-3503. The examiner can normally be reached on 7:30-6 PM EST M-Th.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreeni Padmanabhan can be reached on 571-272-0629. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/S. J. L. /

Examiner, Art Unit 1617

02/17/2009

/SREENI PADMANABHAN/

Supervisory Patent Examiner, Art Unit 1617